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IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

THE SHIP "IROQUOIS", etc.,
A. CHESEBROUGH et al.,
Petitioners.

vs.

MATTHEW BRIDGES,
Respondent.

BRIEF ON BEHALF OF PETITIONERS

In support of the petition for a writ of certiorari.

MILTON ANDROS,
Counsel for Petitioners.

PRESS OF [illegible] 513 CLAY ST., S. F.

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THE SHIP "IROQUOIS", ETC., A. CHESEBROUGH ET AL.,
Appellants and Petitioners in this Court,
vs.
MATTHEW BRIDGES,
Appellee.

BRIEF ON BEHALF OF PETITIONERS.

Statement of the Case.

The libellant, an able seaman, was one of the crew of the American ship "Iroquois", of 1997 register tons, on a voyage from New York to San Francisco, laden with a cargo of general merchandise. The "Iroquois" sailed from New York on or about the 27th day of December, 1899. On the 23rd of February, 1900, when in latitude 56° 50′ south, and longitude 67° 36′ west, a little to the

westward of Cape Horn, the ship encountered a gale, and the libellant, while engaged in furling the mainsail, accidentally, and without any fault on his part or that of the ship, fell from the mainyard to the deck, in consequence of which he sustained a simple fracture, below the knee, of both bones of the right leg. Two of his ribs were also fractured; but from this injury—the bones having been set by the master of the ship—he had perfectly recovered when, at the termination of the voyage, he arrived at San Francisco.

The fractured bones of the leg, as well as the fractured ribs, were also set by the master of the ship, assisted by other members of the ship's company. The subsequent treatment of the libellant's injuries, the care and attention which he received at the hands of the master up to the time of the arrival of the ship at San Francisco, his satisfaction with the treatment received, the apparently favorable progress of his recovery, and other circumstances which may be deemed to be material, will be noticed hereafter.

The ship arrived at San Francisco on the 7th day of May, 1900, where the voyage ended. On the 8th of May the libellant was paid off and his connection with the ship terminated.

On the 14th of May, six days after the arrival of the ship, in consequence of the condition of his leg, the libellant entered the Marine Hospital at San Francisco, where, on or about the 16th of October following, the leg was amputated.

This action is *in rem* against the ship to recover damages for alleged *negligence* on the part of the master—alleged to consist in his omission, after the accident, to deviate from the course of the voyage, by either retracing his course and proceeding with the libellant to Port Stanley, in the East Falkland Island, distant about 480 miles to the eastward of Cape Horn, or else by bearing away for Valparaiso in latitude 33° 1′ 53″ south, longitude 71° 37′ 13″ west, and off the proper course of the ship from Cape Horn towards San Francisco, about 1000 miles; or for a place called Ancud de San Carlos, on the Island of Chiloe on the coast of Chile, in latitude 41° 52′ south, longitude 73° 48′ 40″ west, distant from the proper course of the ship about 780 miles, at any of which ports, as it is claimed, surgical aid could have been secured. The District Court found that, to have returned to the Falkland Islands, would have involved a loss of time of three or four weeks. To deviate a distance of 1000 miles from the regular course would probably have caused an equal loss of time, and the port of Ancud might have been reached with about the same loss of time (trans. p. 128).

(For the courses and distances referred to, see charts, Claimants' Exhibits 2 and 3, and the testimony of Captain Thompson (trans. pp. 45, 47, 48, 49).

A decree having been entered for the libellant by the District Court, the claimants of the ship appealed to the Circuit Court of Appeals for the Ninth Circuit, and assigned for error:

1. That the Court erred in finding and deciding that, under the circumstances of the case as disclosed by the evidence, it was the absolute duty of the master of the ship to deviate from the course of the voyage for the purpose of procuring surgical aid for the libellant.

2. That the Court erred in finding that, under the circumstances of the case as disclosed by the evidence, the master of said ship "Iroquois" was guilty of negligence in not departing from the course of the voyage of said ship, and proceeding with the said libellant to some port other than the port of final destination of said ship, for the purpose of procuring surgical aid for the said libellant.

3. That the Court erred in finding that, under the facts of the case as disclosed by the evidence, the libellant was entitled to a decree against the said ship "Iroquois", or the claimants thereof, in the sum of three thousand dollars.

4. That the Court erred in finding that the libellant was, under the circumstances of the case as disclosed by the evidence, entitled to recover against said ship, or the claimants thereof, any damages whatsoever.

Specification of Errors.

The first and second assignments of error, above stated, sufficiently disclose the contention of the claimants:

(1.) That it was not, under the circumstances of the case as disclosed by the evidence, the absolute duty of the master of the ship to deviate from the course of

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the voyage for the purpose of procuring surgical aid for the libellant.

(2.) That the master of the ship was not, under the circumstances as disclosed by the evidence, guilty of negligence in not deviating from the course of the voyage and proceeding to some port other than that of final destination, for the purpose of procuring surgical aid for the libellant.

Brief of the Argument.

That, whenever a seaman falls sick or is injured in the service of the ship, he is entitled to be taken care of, and, so far as may be, cured at the expense of the ship owner, was declared by the ancient laws of the sea; and this rule may be traced with remarkable uniformity through the marine laws and ordinances of all maritime states, modern as well as ancient. It is an incident to and forms a part of his contract as a material ingredient in the compensation for his services as a seaman.

It does not, however, appear from these ancient laws that, for the purpose of procuring aid for a sick or disabled seaman, the master was required to deviate from the course of the voyage; but, on the contrary, that the seaman was to be set on shore for such treatment only when it was convenient to do so, or the ship was in port.

The effects of the injury must, of course, not have been materially aggravated by the culpable negligence of the master; for it is settled law that if, through such negligence, the consequences of the injury are rendered more serious in respect to prolonged suffering and

ultimate recovery, or if such recovery be materially retarded or rendered impossible, the shipowner would be liable in consequential damages to the seaman.

> "Beyond this I find no authority in the ancient or modern codes, in the recognized text-books, or the decisions on maritime law, for the allowance of consequential damages resulting from wounds or hurts received on board ship, whether arising from ordinary negligence of the seaman himself, or of others of the ship's company."
>
> Per Brown J., in the "*City of Alexandria*", 17 Fed. R. 395.

Cases may and do arise where, in case a seaman falls sick or is injured on the voyage, it becomes the duty of the master to proceed to and touch at some port for the purpose of procuring for him medical or surgical aid. This duty is not, however, an absolute duty. If it were, it could not be limited or restricted by any circumstances, extraneous or otherwise. No matter what the nature of the illness or injury might be, whether severe or slight, or in what seas or on what ocean the ship might be, or to what distance she might have to deviate; no matter what the dangers might be to which such deviation might expose both the ship and cargo, or what its effect might be on any existing insurance on ship or cargo; no matter what claim for damages might arise which the cargo owner could enforce against the shipowner, the ship would be liable to the seaman for not bearing away for the nearest possible port, and the master could not, except at his peril, exercise any

judgment or discretion as to the necessity of the departure from the course of the ship.

We do not understand such to be the law in respect to this duty of the master, but rather that his duty in this regard is to be determined upon a consideration of all the surrounding circumstances that should bear upon and govern his action in the matter, and that he is to decide what, in the exercise of a sound judgment and discretion, taking into account and dispassionately considering all the circumstances which should govern his action and acting, in all respects in perfect good faith, the exigencies of the case require him to do.

Some of the master's duties "and some of the most "important among them, arise only on extraordinary "occasions, and must be measured and defined by the "circumstances of each case and the exigencies which "it presents".

2 Parsons, Ship. and Ad., 4.

The master owes a duty to the shipowner and the cargo owner not to deviate from the usual course of the voyage between the port of departure and that of destination. If he deviates from it without a sufficient legal excuse, such deviation operates to discharge, from that moment, the underwriter on the ship and cargo from liability under his contract of insurance; and the cargo owner, whether *insured or uninsured*, would have a cause of action against the shipowner for any damage to the cargo consequent on such a deviation.

Among the sufficient legal excuses for a deviation

may be mentioned the cases where it is made for the purpose of recruiting the crew when generally disabled by sickness, or where the ship bears away to a port to refit, or to get fresh provisions, or to procure a new crew, or to succor a ship in distress with a view to the saving of life.

Now, as a deviation is justifiable for the purpose of rescuing and saving the lives of the crew of a ship disabled at sea and in need of succor, no reason can be seen why this rule should not apply where there is immediate need of medical aid for the preservation of the life of one of the crew of the deviating vessel, or why, in such case, a deviation, to obtain such aid, would not be justifiable. If, then, one of the crew should fall so ill, or be so severely wounded, that, without the earliest medical or surgical aid his life must be despaired of, or at least be in evident danger, the duty of the master to take, so far as may be in his power, efficient steps to procure such aid would generally, we think, be a duty paramount to that which he owes the owners of the ship and cargo, and would be a legal excuse for deviation, because it would, under the circumstances, be made in the discharge of a moral as well as a legal obligation to save human life.

> "To make the excuse for a deviation valid and effectual, it must without doubt be shown that there was a *real necessity* for the departure of the vessel from her proper course. The exigency which demands the relief must be equal in importance to the intervention which is required in its behalf. Whether it exists, and what it is, must always be questions of fact. To determine this rightly, all the

circumstances of infirmity and suffering and of relief afforded on the one hand must be considered in connection with the increased length of the voyage, the prolonged time required to accomplish it, and the additional risk incurred on the other."

2 *Parsons on Ins.*, 34n.

We shall show that neither the nature of the injury nor the circumstances attending it pointed to any danger to the life, or even to any permanent disability of the libellant, nor that the exigency which demanded relief, equalled in importance the intervention which it is contended was required in its behalf.

The decision of the master in a given case is not, we admit, conclusive as to what will constitute a proper discharge of his duty, as it may be quite apparent that, under the circumstances, it was one which a master of discretion, uninfluenced by selfish motives, and acting in complete fidelity to all his duties, could not reasonably have reached. It is then for the Court to determine and declare whether or not, in view of all the surrounding circumstances, the master acted in good faith; and whether his judgment and decision in respect to the necessity of bearing away to some accessible port of distress was or was not that of a reasonable, prudent and humane man, having in view the welfare of the libellant and the duty which he owed to him as one of the crew of the ship, together with the duty which he owed to the ship and cargo.

The law on this subject is well illustrated in the following cases:

In the *Wensleydale*, 41 Fed. 602, it is said:

> "On such vessels (not passenger ships), from time immemorial, it is the master of the ship who is expected to act as physician and nurse according to his ability in case of sickness or accident, and his care and attention are all that the crew have the right to demand under the contract of hiring."

The case at bar has a close parallel in

Peterson vs. *The Chandos*, 4 Fed. 645; in that case libellant fell from aloft on June 10th, broke his thigh bone and sustained other severe injuries. The master bandaged his leg with splints and placed it in a box made for that purpose. The ship arrived at her destination on August 22nd. Libellant was then sent to the marine hospital where his injuries received further treatment. Libellant claimed "that it was the duty of " the master, under the circumstances, to have gone " into the nearest port—Valparaiso—where proper " surgical aid and appliances could have been ob- " tained".

The Court, however, HELD that "the vessel was " under no obligation to make that sacrifice of time and " risk of cargo for the libellant". In coming to this conclusion, the Court proceeded upon the theory that " the libellant * * * was clearly entitled to be " cared for at the expense of the ship", and gave its attention, then, to the "nature and *extent* of this obligation". The views of the Court on this subject are expressed in the following language:

> "It is the duty of the master to seek surgical aid for a wounded seaman—while there is any

chance of its being useful; yet, it by no means follows that it is his duty to do so at any sacrifice or risk to the vessel or voyage. There must be some limit to the obligation to seek aid outside of the vessel. A fall from aloft is an incident of a seafaring life, and the law can scarcely be that, in such a case, surgical aid must be sought to the serious hindrance or delay of the voyage and the liability of the cargo to depreciation in the port of destination, or the delay or loss to some important enterprise undertaken upon the faith of its due delivery."

These principles are in substantial agreement with the views of the learned Judge who found for libellant in the case at bar, and who expresses them as follows:

> "Whether he is required to deviate from his course, and touch at some port at which the seaman can receive better attention than can be given him upon the vessel, *will depend upon the circumstances of the particular case*" and again:
>
> "The obligation of the ship is discharged only when the master has *used reasonable care* in providing for the comfort and cure of the seaman."

Now the essential circumstances of the case at bar seem, by a remarkable coincidence, to be identical with those in "The Chandos": The voyage along the South American Coast seems to have been the same; the deviation—to the same port, Valparaiso—would have been the same; in both cases 73 days elapsed between the day of the accident and the day of the arrival in the port of destination. In "The Chandos", although the injuries suffered by the seaman were severer and apparently demanded greater sacrifice on the part of the ship, to save the life of the injured man,

the Court held that, in view of the time and risk likely to be consumed and incurred, the master was not bound to make the departure.

A case which states clearly the principles involved in the question before the Court is, *Danvir* vs. *Morse*, 139 Mass. 323.

Under circumstances similar to those of the case at bar, the plaintiff contended that it was the duty of the master, immediately after the accident, to sail to the nearest port where surgical aid could be given, and there to land him; but this instruction was refused, and the jury were instructed that such was not the law, and that other circumstances were to be regarded besides the comfort and well-being of this one person on board the ship; that there was no absolute duty upon the master to seek the nearest port;

> "that *his duty was to be ascertained upon consideration of the circumstances bearing on the case, and he is to decide that matter, in the exercise of a sound judgment and discretion, taking into account all the circumstances which are to govern his actions*"; also "that *the burden was upon the plaintiff to show that the master's decision was not reasonable and proper at the time and under the circumstances*" (p. 324).

In other words, the instructions pointed out that all for which the plaintiff was entitled to recover was for the *aggravation to his original injury, if any, which proceeded from the negligence of the defendants.*

These instructions were sustained by the appellate Court, which stated the "true rule" to be:

"It was for the jury to consider the condition of the plaintiff, the situation of the master, the ease with which he might reach another port, the probability of finding medical attendance, and all other circumstances, and to determine whether the plaintiff had sustained the burden of showing that the decision of the master was otherwise than reasonable and proper."

The questions to be decided by the Court are, then: Was any aggravation of the libellant's injury or the subsequent loss of his leg the proximate result of *culpable negligence* on the part of the master? and was his decision to proceed on the voyage, without deviating, otherwise than reasonable and proper, under a just view of all the facts and circumstances as developed by the testimony? To determine these questions the attention of the Court is now respectfully solicited to the details of the testimony bearing upon this inquiry.

The nature of the injury was not one to create alarm in the mind of the master as being dangerous to life or likely to result in any permanent disability. It was a simple fracture of both bones of the leg below the knee, one of these bones being so near the muscular surface that it would seem to have been easy for the master, or any person of ordinary intelligence, to have discovered the nature of the fracture, and when, in the attempt to set them, the ends of the fractured bones could easily be brought into apposition. The first duty of the master was to give immediate aid to the wounded seaman, and, if possible, to set the fractured bones. This the master proceeded to do; and, as he believed—and there is no proof that this belief was not, either at that time, or at

any time during the voyage, well founded—brought the ends of the bones into juxtaposition. Having performed this operation, splints were applied and the leg bandaged. " I bathed the leg with hot water, and set it, and put " the splints on. * * * I bandaged it tight" (trans. pp. 37, 38). This, as everyone knows, is one of the usual methods, after a limb has been set, employed to keep the bones in position. The libellant was then placed in his bunk, and his leg placed in a slightly elevated position by putting a box, covered with pillows, under it (trans. p. 38).

On his cross-examination (trans. pp. 62–63) he describes his method of procedure in setting the bones, and why he believed that they were properly set. His testimony in this respect is of a character to leave little, if any, doubt that this operation was successful.

After the libellant was placed in his bunk in the forecastle, which, as appears from the master's testimony—and there is nothing to the contrary—was dry, warm, and well-ventilated (trans. p. 50), the steward was instructed to give him gruel, mush, and other light food; " there were other things from the cabin table which " were given to him as well, that were cooked for the " cabin and given to him" (trans. p. 39). * * * "I " think I must have given him that diet until after I " took the splints off, to the best of my memory. I " think I gave it to him off and on pretty nearly all the way, different things" (trans. p. 44).

In answer to the inquiry whether the libellant made any request of him for different kinds of food (p. 44) he

replied: "I don't think he made any request of me at " all. I don't remember his making any request at all " for any other kinds of food. He seemed to be satis- " fied with what he got. I remember giving the " steward a can of milk every four or five days to make " his gruel with; condensed milk which we used for " that purpose, together with corn-starch and things " like that. That was given to the steward, and my " instructions were to give it to that man" (trans. p. 44).

When the master did not himself dress the libellant's leg, he ordered the steward to do it. "I gave the stew- " ard directions to dress his leg, to wash it with warm " water and dress it with vaseline, and from there on " and up to the last" (trans. p. 51).

Did he make any complaint that he was not being attended to? "No, sir; he made no complaint. He " seemed to be contented, when I asked him if he felt " all right and was satisfied. He said that he was; he " was perfectly contented; that he was getting every- " thing he wanted" (trans. pp. 52–66).

Now, of the captain's testimony respecting his treatment of the libellant, and of the satisfaction of the latter with it, there is not one statement, if we except the salts, that is contradicted or qualified by the libellant.

Whenever the master deemed it necessary—and, for the purpose of ascertaining when it was necessary, he

seems to have kept a careful watch over the man—he administered salts (trans. p. 38).

The libellant, however, testifies that he never received, in a single instance, anything except the regular forecastle food (trans. pp. 28, 32). As opposed to this testimony is not only the testimony of the master giving details as to the kind of food furnished him, but the probability arising from the humane treatment of him by the master from the time he was injured until he arrived at San Francisco, and also the entry in the official log-book on page 44, a copy of which appears on page 41 of the transcript, which, before the end of the voyage, was signed by the libellant: "I set the leg, " bandaged the side, and administered salts and regu- " lated his diet." On cross examination (trans. p. 58), the captain explains what he meant by "regulated his diet".

After he was put in the forecastle the captain visited him every two or three days from that on. "I asked " him every time I went in there how he was getting " on; if he had everything he wanted. He said he was " getting along all right. He seemed to be contented; " that he had everything he could wish" (trans. p. 42).

The libellant having stated, on his cross examination, that he sent to the captain for vaseline and salts, and did not get either, then admits that it was only on two occasions that he did not get the salts, but he always got the vaseline (trans. p. 34). Why he did not get salts as well as vaseline, if he sent for them, can be explained only by the conjecture that his request was not

made known to the master. But this is an immaterial matter except as it may bear upon the veracity of the latter. The captain, in answer to a question whether he furnished him with everything he requested, answered that he did, and everything he asked for he got. He was then asked whether the libellant sent for salts on one or two occasions and did not get them. He answered: "He got everything he sent for. In fact, he " did not need to send for anything, because I went to " the forecastle and asked if he wanted anything. " When he wanted anything he got it. He did not " need to ask for salts. I asked him if his bowels were " working and everything like that, to see if he was in " proper condition. When he said they were not work- " ing, I gave him salts. *I considered it my place to* " *attend to that. He did not need ta ask for anything* " *like that. He was not given occasion to*" (trans. p. 43). This testimony is not denied by the libellant except in the instances noticed above.

It sufficiently appears from the testimony of the master that the libellant was, in every respect, treated by him with consideration and kindness, and there is nothing in the testimony of the latter to indicate anything to the contrary. This view was entertained by the District Judge: "The libellant was treated with " kindness by the master at all times after the accident, " and had all the care that it was possible for one in his " situation to receive on board of a vessel at sea, when " unattended by anyone possessing surgical knowledge " and skill" (Opinion, trans. p. 110). This treatment

is to be taken into consideration as material to the question whether the master acted toward the libellant in good faith, and spoke truly when he testified that, when he could have shaped a course for Valparaiso, he did not do so because the appellant was apparently " entirely getting along all right. I thought the leg " would be all right when we got here". * * "I did " not think it necessary to put away. I did not see any " need of it. I did not think he could get any better " treatment than I could give him myself at the time"; and that he was of opinion that the leg was getting along all right and knitting successfully (trans. p. 50).

From and including the 23d of February up to the 1st of March, the ship had made about 360 miles to the northward and westward from the point where the accident happened. During all of this time there was nothing to indicate that the libellant was not getting along all right; he thought that he was, and so did the master. No special circumstances connected with his injury were developed to indicate that, for the purpose of securing surgical aid, it was necessary or advisable to put the ship about and proceed to Port Stanley, distant about 480 miles, on a straight course, to the northward and eastward of Cape Horn.

The learned Judge of the District Court, referring to the question, how long it would have taken, said: " The testimony of the master of the 'Iroquois', " which, I think, should be accepted upon this point, " was to the effect that it probably would have " taken from three to four weeks to have gone to Port

" Stanley and return to the place of the accident, because " in returning the vessel would have had to beat against " a head wind" (Opinion, trans. p. 109).

So as to bearing away for Valparaiso. How long it would have taken the ship to have reached that port is a matter of mere conjecture. "It is very hard to tell. " I might have got to Valparaiso in a month; it might " have been less than a month" (trans. p. 47). How much going there would have lengthened the voyage as to distance "is pretty hard to figure on; I do not know" (trans. p. 47). Had the ship been at a point in longitude 80° west and latitude 50° south, where she could have first borne away for that port (trans. p. 47), sailed in a straight line for Valparaiso, in longitude 71° 37′ 23″ west, and latitude 33° 1′ 53″ south, the distance to that port would have been 1,085 miles; but, as the ship could not have sailed in a straight line to that port, no one could, of course, tell what distance the ship would have to sail in order to reach it, nor, consequently, the time occupied in reaching it. Under the view, however, which we take of this case, it is not deemed necessary to go into any close calculation of the length of time that it would have taken the ship to have reached Valparaiso, because it must, necessarily, be in great part based on conjecture as to the force and direction of the wind, especially when nearing the Chilean coast. While, however, the master testified that the nearest distance he was from Valparaiso on the course which he sailed towards San Francisco was 500 to 600 miles, which seems to have been a mere off-hand guess,

an examination of the courses laid down by him on the chart (Claimant's Exhibit 2) taken from the ship's log book, will show, that when, on that course, the ship was in the latitude of Valparaiso, she was distant from that port 1,018 miles, a distance which must have been, so far as can be known, necessarily lost, had she deviated from her course and gone to that port.

We say nothing of the master's not proceeding to Ancud de San Carlos, where it does not appear that there was any American Consul who could have taken charge of the libellant; for, if it were the duty of the master, under then existing circumstances, to have landed the man at some place, it must have been at one where he could have placed him in charge of some responsible person to watch over and take care of him. Nor do we speak of his not proceeding, as seems to be suggested (trans. p. 97), to the lighthouse on the rocks of Los Evangelistas at the western entrance to the Straits of Magellan, to be shipped thence either to Sandy Point situate in those straits, and between two and three hundred miles to the eastward of the Evangelistas Islets, or to Valparaiso; nor of not having cruised along the coast of Chile in the expectancy of falling in with and putting him on board of some passing steamer. It is suggested, in the opinion of the learned Court of Appeals, that the ship "could have made Evangelist " Island by sailing one or two days out of her way". Had the master consulted the "Directory for Navigation of the South Pacific Ocean", a standard work by Alexander George Findley, and which, presuma-

bly, he possessed, he would have derived the following information: "Los Evangelistas, consisting of four "rocky islets and some detached rocks and breakers "* * * are very rocky and barren, and situated "only to afford a resting place or breeding haunt for "seals and oceanic birds, but a landing place may "be found on one of them * * *." Certainly not a very promising place in which to secure surgical aid and attendance for a sick or wounded man. To have disposed of the man in any of these ways, if it could have been done, which is not at all probable, would have been an act of folly, and, had it been done, it might well have been charged that the master did not care what became of the libellant, but sought to get rid of him as an encumbrance, and to escape payment of his wages up to the termination of the voyage.

On the 4th of March, nine days after the accident, the ship was in latitude 30° south, longitude 88° west (see Claimants' Exhibit 2), distant from Valparaiso in a direct line 1254 miles. The ship was then in a position to have had her course shaped for Valparaiso, had the condition of the libellant then called for such a deviation. At this time, however, there was not, so far as was known or could then be known, any necessity for doing so.

At this time there was nothing in the condition of the libellant that called for such or any deviation from the course of the ship; no fever, nor any symptoms had supervened to raise a doubt but that he was getting along as well as could be expected of a man whose leg had been fractured but a short time previous. Nor did

the subsequent examination of the leg, on removal, for that purpose, of the bandages and splints, disclose that any mistake as to the condition of his injured limb had been made.

On the 30th of March, 38 days after the occurrence of the accident, the ship then being in longitude 109° west, and latitude 7° 50′ south (see chart, Claimants' Exhibit 2), and about 1790 marine miles west from the coast of Chile, the bandages and splints were, by the master, removed from the libellant's leg for the purpose of examining it, this being the earliest time that the master thought it safe to do so. "I did not think it safe " to take the bandages off (before). I had to give the " leg time to knit" (trans. p. 43, cross-ex., p. 57). If taken off before, he feared that the bones would separate (trans. p. 43). I "found that the leg was im- " proving and seemed to be in pretty good condition with " the exception of some sores and blotches on the leg. I " thought it might be on account of the blood settling there " like blood vessels, or blood blisters, rather". * * * " I washed the leg with warm water, and a little carbolic " acid in to purify it, and dressed it with vaseline". * * * "For about three weeks I dressed it pretty nearly " from one to two days, * * * by taking the band- " ages off, washing the leg and rubbing it with lini- " ment; that is, where there were no sores, and where " there were sores, I dressed it with vaseline" (trans. pp. 43–44).

"About a week after I took the splints off the first " time, he was able to go out on deck with the aid of

" crutches." After this he went out on deck, "whenever " the weather permitted him to go out". This continued up to the time of his arrival at San Francisco. " Before he arrived here he was able to go out on deck " and walk around deck a little on crutches; of course, " he had to have some one help him out of his bunk. " When he got on his crutches he could move around" (trans. p. 45).

In respect to the blood blisters on the leg, they do not appear to have been of a serious or unusual nature; nor was there anything in the appearance of the leg that indicated that it had not been properly set, so far as the master could discover, when the bandages and splints were removed. The libellant, however, testifies that his leg was loose; it had not knitted, and that it worked back and forth when the splints were off.

"Q. Was that so anybody could see it? A. Yes, sir" (trans. p. 26).

Now, if this were so, it is surprising that not only the libellant did not call the attention of the master to it, but still more surprising that the latter did not see it when he examined the leg after the splints were taken off for the very purpose of ascertaining its condition.

It is to be observed that at no time prior to the termination of the voyage did the libellant request to be landed at any port or place, or make any suggestion to that effect. Nor did he at any time request that the master come and see him, when the latter did not come

(trans. p. 35). He thought he was getting along all right, and said so to the master. Doubtless he preferred remaining on the ship, where he was kindly treated and cared for, to the end of the voyage and have an opportunity of going to his friends, who, it would seem, resided at or near Port Townsend (trans. p. 28), to being landed at some port on the Chilean coast, among a strange people speaking a strange language. In fact, actuated by a desire to reach his friends, he remained at the Sailors' Home a week, waiting to hear from them, before he went to the hospital.

We believe we have now called the attention of the Court to the material facts of this case. Now, under a fair view of all these facts does it satisfactorily appear that the master of the ship "Iroquois" was guilty of any negligence in the discharge of any duty that, as master of the ship, he owed to the libellant as one of the crew? If, in any respect he has been guilty of negligence, wherein does this negligence consist? We respectfully submit that there is no sufficient evidence to establish this charge beyond the naked fact that the libellant was not landed at some intermediate port for surgical treatment, and as to this, no necessity, either at the time of the happening of the accident or during the voyage of the ship, is disclosed in the evidence. If, under the circumstances of the case as known, or as honestly and intelligently believed to then exist, the master had left the libellant at some port on the coast of Chile, or else-

where, and through maltreatment or malpractice at the hands of others on shore, he had sustained additional injury, what excuse could the master have offered for not having kept him on shipboard to the end of the voyage?

We respectfully submit that the petition for a writ of certiorari should be granted.

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